

FEB 15 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

**WEST HOLLYWOOD COMMUNITY
REDEVELOPMENT COMMISSION,**

Claimant - Appellant,

v.

**REAL PROPERTY LOCATED AT
7494 AND 7501 SANTA MONICA
BOULEVARD, WEST HOLLYWOOD,
CALIFORNIA,**

Defendant.

No. 04-56043

D.C. No. CV-02-04176-R

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted February 6, 2006
Pasadena, California

Before: **KOZINSKI, TROTT and BEA**, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

As applied to the Center, the Controlled Substances Act is a valid exercise of Congress's Commerce Clause power. See Gonzales v. Raich, 125 S. Ct. 2195, 2205–09 (2005). Thus, claimant's interest in the defendant property is subject to forfeiture. See 21 U.S.C. § 881(a)(7).

Claimant argues that its cooperation with the Los Angeles Sheriff's Department and its reliance on Ninth Circuit caselaw qualify it as an innocent owner of defendant property. We express no view as to whether claimant's actions satisfied the innocent ownership requirements of 18 U.S.C. § 983(d) prior to the Supreme Court's decision in United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001).

It is clear, however, that after that decision, claimant did not do “all that reasonably could be expected under the circumstances to terminate [illegal] use of the property.” 18 U.S.C. § 983(d)(2)(A)(ii).** Oakland Cannabis rejected the argument that there was a medical necessity exception to the Controlled Substances Act, and thereby put claimant on notice (if it wasn't already) that the Center's activities violated federal law. Oakland Cannabis, 532 U.S. at 486. Nevertheless,

** Claimant does not and could not argue that it “did not know” of the Center's conduct. 18 U.S.C. § 983(d)(2)(A)(i). Because claimant cannot satisfy the requirements of section 983(d)(2)(A), we need not decide whether claimant also fails to satisfy the requirements of section 983(d)(3)(A).

claimant did nothing to terminate illegal use of the property: Although it had a contractual right to default the loan and institute foreclosure proceedings in court, it didn't. Nor did it contact federal law enforcement authorities to discuss the Center's legality post-Oakland Cannabis. Five months after the Supreme Court's decision, illegal use of the property was ongoing—the DEA seized over five hundred marijuana plants and over one hundred pounds of marijuana at the Center. The district court thus correctly concluded that claimant cannot possibly prevail on its innocent ownership defense.

AFFIRMED.